HIGH COURT OF UTTARANCHAL AT NAINITAL

(Court's order whether the case is or not approved for reporting)

(Chapter VIII Rule 32 (2)(b)

Description of the case.

W.P. No. 313 of 2004 (M/S)

Rajendra Singh and others

Versus.

Civil Judge Junior Division & others

Approved for reporting.

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~~Not approved for reporting~~

Date of decision 27.4.2004.

Initial of Judge

HIGH COURT OF UTTARANCHAL AT NAINITAL

Writ Petition No. 313 of 2004 (MS)

Rajendra Singh & others ….. Petitioner

Versus

Civil Judge (JD), Ruderpur & others …… Respondents

Sri Naresh Chhabara, Advocate for the petitioner
Sri H.M. Raturi, Advocate & Standing Counsel for the respondents.

Dated: 27.4.2004

Hon'ble Rajesh Tandon, J.

Heard the learned counsel for the parties.

By the present writ petition the petitioner has prayed for the issue of a writ of certiorari quashing the order dated 6.2.2004 passed by the respondent no.1.

Briefly stated the facts giving rise to the present writ petition are that a suit was filed by the plaintiff petitioner praying for a permanent injunction restraining the respondents from making any construction over the public way situated in the disputed land under the ownership of the petitioner no.1 to 3.

The short submission of the petitioner is that defendant no.1 Principal, Primary School, Kichcha is making construction on the land

of the petitioner. Written statement has been field on 24.2.2004, wherein it has been admitted that the construction in dispute is being done by the Gram Shiksha Samit in the public interest. Thereafter an application under Order 1 rule 10 C.P.C. was field by the plaintiff for the impleadment of Gram Shiksha Samiti as necessary party on the ground that the petitioner has come to know about the construction being made by the Gram Shiksha Samiti. The said application was objected by the defendant respondent on the ground that Gram Shiksha Samiti is included Gram Panchayat, therefore, the application is not maintainable.

The short submission of the petitioner is that his application under order 1 Rule 10 C.P.C. is intended only to avoid the misjoinder of parties. Order 1 Rule 10 sub Rule (1) (2) and Sub Rule (4) provides as under:

Suit in name of wrong plaintiff- *(1) Where a suit has been instituted in the name of the wrong person as plaintiff or where it is doubtful whether it has been instituted in the name of the right plaintiff, the Court may at any stage of the suit, if satisfied that the suit has been instituted through a bona fide mistake, and that it is necessary for the, determination of the real matter in dispute so to do, order any other person to be substituted or added as plaintiff upon*

such terms as the Court thinks just. Order 1 Rule 10 (2) C.P.C. reads as under:

Court may strike out or add parties:- (2) *The Court may at any stage of the proceedings, either upon or without the application of either party, and on such terms as may appear to the Court to be just, order that the name of any party improperly joined, whether as plaintiff or defendant, be struck out, and that the name of any person who ought to have been joined, whether as plaintiff or defendant, or whose presence before the Court may be necessary in order to enable the Court effectually and completely to adjudicate upon and settle all the questions involved in the suit, be added."*

"(4) Where defendant added, plaint to be amended-*d Where a defendant is added, the plaint shall unless the Court otherwise directs be amended in such manner as may be necessary and amended copies of the summons and of the plaint shall be served on the new defendant and if the Court thinks fit, on the original defendant."*

In the instant case there is controversy that Gram Shiksha Samiti is making constructions over the land in dispute. In view of the aforesaid facts the plaintiff has a right and privilege to implead the defendant against whom relief has been sought for proper adjudication of the rights of parties. It has come from the evidence on record as well as from the objections filed by the defendant that Gram Shiksha

Samiti is under the supervision of Gram Sabha Panchayat and as such Gram Shiksha Samiti through Gam Panchayat is necessary party for proper adjudication of dispute between the parties.

In view of the aforesaid facts since in the written statement is has already been stated that the construction is being made by Gram Shiksha Samiti, application under Order 1 Rule 10 (2) (4) deserves to be allowed.

The writ petition is allowed. Order dated 6.4.2004 passed by the Civil Judge (JD) Rudrapur in O.S. No. 12 of 2004 is quashed. Application of the petitioner under O. 1 Rule 10 (2) (4) C.P.C. is allowed. He is permitted to correct the array of the parties.

No order as to costs.

(Rajesh Tandon J.)

27.04.2004
Dhyani